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LEE, HONG, DEGERMAN, KANG & WAIMEY
660 S. FIGUEROA STREET
Suite 2300
LOS ANGELES, CA 90017

EXAMINER	
FLETCHER, MARLON T	

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/683,915
Filing Date: October 10, 2003
Appellant(s): LUDWIG, LESTER F.

Craig W. Schmoyer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/11/2009 appealing from the Office action mailed 7/24/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

09/812,400

10/676,926

10/676,249

10/680,591

10/703,023

10/702,262

10/702,415

11/004,746

11/040,163

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,310,962	Kimpara et al.	5-1994
6,062,868	TORIUMI	5-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 25-27, 29-35, 37, 39-46, 48-54, and 62, are rejected under 35 U.S.C. 102(b) as being anticipated by Kimpara et al. (5,310,962).

As recited in claims 25 and 44, Kimpara et al. disclose a system for extracting and generating control signals from video signals, said system comprising: a first video signal decomposition element (2) for receiving a first incoming video signal, wherein said first video signal decomposition element separates at least one image-related component from said first incoming video signal (column 3, lines 43-50); and a processor (4) for processing said at least one image-related component of said first incoming video signal according to a control signal extraction algorithm, wherein said processing results in an associated at least one outgoing control signal comprising a signal of MIDI format (figure 1). Kimpara et al. inherently discloses at least one outgoing control signal comprising a signal of MIDI format at least one of a MIDI continuous controller message and a MIDI note message, the outgoing control signal being generated responsive to content in the image represented by said first incoming video signal. (MIDI is an electronic standard used for transmission of digitally encoded music, wherein the transmission includes a controller message for controlling an instrument, which includes a note message). Kimpara et al. disclose tempo control which directly relates to the distribution of notes, wherein the tempo directly effects the note output.

As recited in claims 26, 37, 45, Kimpara et al. disclose the system, wherein said first incoming video signal originates from a video camera (12, 13).

As recited in claims 27 and 46, Kimpara et al. disclose the system, wherein said video camera is attached to a musical instrument (23) (column 6, lines 19-20).

As recited in claims 29 and 48, Kimpara et al. disclose the system, wherein an incoming control signal is used by said control signal extraction algorithm to generate said at least one outgoing control signal (figure 2).

As recited in claims 30 and 49, Kimpara et al. disclose the system, wherein said incoming control signal comprises signals of MIDI format (column 4, lines 39-44).

As recited in claims 31 and 50, Kimpara et al. disclose the system, wherein said control signal extraction algorithm is selected from a plurality of pre-stored control signal extraction algorithms (abstract; and figure 2).

As recited in claims 32, 39, and 51, Kimpara et al. disclose the system, wherein said control signal extraction algorithm recognizes at least one pattern in said incoming video signal, wherein said at least one pattern is used to generate said at least one outgoing control signal (abstract).

As recited in claims 33, 40, and 52, Kimpara et al. disclose the system, wherein said control signal extraction algorithm further calculates at least one pattern parameter associated with said at least one pattern in said incoming video signal, wherein said pattern parameter is used to generate said at least one outgoing control signal (column 3, lines 43-56).

As recited in claims 34-35, 41-42, and 53-54, Kimpara et al. disclose the system, wherein said control signal extraction algorithm further recognizes at least one gesture in said incoming video signal, wherein said recognition is used to generate said at least one outgoing control signal, wherein said control signal extraction algorithm further calculates at least one gesture parameter associated with said at least one gesture recognized in said video input signal, wherein said gesture parameter is used to generate said at least one outgoing control signal (column 4, lines 1-38).

As recited in claims 43 and 62, Kimpara et al. disclose the system, wherein said first incoming video signal is processed by a real-time image processor (14) to generate a modified video signal, wherein said real-time image processor is controlled by an incoming control signal.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 28, 36, 38, 47, and 55-61, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimpara et al. in view of Toriumi (6,062,868).

Kimpara et al. are discussed above. As recited in claim 56, Kimpara et al. disclose the system, wherein said first incoming video signal originates from a video camera (12, 13). As recited in claims 58, Kimpara et al. disclose the system, wherein an incoming control signal is used by said control signal extraction algorithm to generate said at least one outgoing control signal (figure 2).

As recited in claim 59, Kimpara et al. disclose the system, wherein said control signal extraction algorithm further calculates at least one pattern parameter associated with said at least one pattern in said incoming video signal, wherein said pattern parameter is used to generate said at least one outgoing control signal (column 3, lines 43-56).

As recited in claims 60-61, Kimpara et al. disclose the system, wherein said control signal extraction algorithm further recognizes at least one gesture in said incoming video signal, wherein said recognition is used to generate said at least one outgoing control signal, wherein said control signal extraction algorithm further calculates at least one gesture parameter associated with said at least one gesture recognized in said video input signal, wherein said gesture parameter is used to generate said at least one outgoing control signal (column 4, lines 1-38).

Kimpara et al. do not disclose a video display for an audience.

However, Toriumi (claims 28 and 47) discloses a system similar to Kimpara et al., wherein said incoming video signal is communicated to a video display (9) visible to an audience, wherein Toriumi discloses a video decomposition element (44).

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Toriumi with the teachings of Kimpara et al., because the combination would further provide a display for viewing by an audience.

With respect to claims 36, 38, 55, and 57, Kimpara et al. do not disclose multiple decomposition elements.

However, Kimpara et al. (figure 5) and Toriumi (figure 1), disclose multiple video inputs. Since each input is decomposed by the decomposition element, it would be obvious to one skilled in the art to provide a second decomposition element or a decomposition element for each video input.

Further it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. (St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

(10) Response to Argument

The appellant argues that the Kimpara et al. reference fails to disclose the amended claims. The appellant states that the reference and the examiner fail to provide any inherency for rejecting the independent claims. The examiner disagrees. MIDI is an electronic standard used for transmission of digitally encoded music, wherein the transmission includes a controller message for controlling an instrument, which includes a note message). (B.) Kimpara et al. disclose tempo control which directly relates to the distribution of notes, wherein the tempo directly affects the note output; thereby controlling the rate at which the note is produce. Addressing the hand posture, the image input can clearly be of any part of the human or the entire human as seen in figure 5 and clearly discussed in the abstract. This limitation does not define over Kimpara et al. The applicant provided a summary of MIDI messages by MIDI Manufacturers Association. This clearly shows a relationship of Tempo and Note-On and Note-Off events and a timing clock. The Key-ON/Off is a note message. The velocity and timing which relate to the tempo are continuous controller messages. The summary states that controllers include devices such as pedals and levers. Both devices can be used to control tempo, wherein this is normally how tempo is controlled;

further including knobs and sliders. Based on the appellant's summary tempo would clearly fall under the defined Midi Controllers which usually relates to a knob control. The above discussion addresses (C.) wherein it is shown how the Tempo control signal inherently teaches a MIDI Continuous Controller or a MIDI Note message. (D.) The Examiner addresses the Appellant's arguments by pointing out direct correlations of the reference and the claimed invention. The appellants argument only relies on the MIDI out provides tempo control. As pointed out above, the tempo relates directly to the notes wherein the MIDI data includes a note message and timing data for controlling note generation, wherein the tempo of timing relates to a continuous controller message, wherein the tempo is normally controlled by some type of knob which by appellant’s notes categorizes the tempo as a continuous controller element. (E.) The claims are not allowable over the prior art of record base on the above rejections and the discussions thereof. In summary, Kimpara et al. disclose an acoustic (sound/notes) control apparatus for controlling music (via Midi) in response to a video signal. The apparatus can control a musical instrument based on image variations. The abstract of the present invention describes the operation of Kimpara et al. This shows the close relation of Kimpara et al. and the claimed invention. The minor amendments made by the appellant do not provide any differences not found in the prior art of record. For the reasons discussed above, the rejections of the claims have been maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Marlon T Fletcher/

Primary Examiner, Art Unit 2832

Conferees:

Elvin Enad /Elvin Enad/

Justin P. Bettendorf /Justin P. Bettendorf/
RQAS, TC 2800